

STANDARDS FOR
BRINGING DELINQUENT
FEDERAL DEBTS

into the
TREASURY OFFSET
PROGRAM

Standard Operating Procedures

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Department of the Treasury
Financial Management Service
Debt Management Services

Standards for Bringing Delinquent Federal Debts into the Treasury Offset Program

Delinquent Federal Debts into the Treasury Offset Program

Background.....Page 1

Debt Submission.....Page 3

**Creditor Agency Requirements Before
Submission**

**Certification of Debts by Federal Creditor
Agencies**

Interest and Penalties

Maintenance of Delinquent Debt.....Page 6

Agencies' Role

FMS' Role

Inquiries.....Page 8

Attachment

Creditor Agency Certification Letter

Standards for Bringing Delinquent Federal Debts into the Treasury Offset Program

Purpose

The purpose of this standard operating procedure is to inform FMS, creditor agencies, and any interested party about the processes FMS is using to ensure that delinquent debts are properly submitted into the Treasury Offset Program by creditor agencies for collection through administrative offset. This procedure does not confer any rights upon anyone that the person would not otherwise have, nor does failure to follow the procedure necessarily invalidate an offset.

Background

Administrative offset to collect delinquent debts is authorized by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996. The administrative offset program administered by the Department of the Treasury is named the Treasury Offset Program (TOP). The Financial Management Service (FMS) of the Department of the Treasury operates the TOP.

The Debt Collection Improvement Act of 1996 (DCIA) mandates the referral of all Federal debts over 180 days delinquent to Treasury (i.e. FMS) for the purpose of administrative offset. The DCIA further requires FMS, Department of Defense, the U.S. Postal Service, or any other government corporation, or any other disbursing officials of the U.S. designated by the Secretary of the Treasury, to offset Federal payments to pay the delinquent debts.

The TOP includes a delinquent debtor database. Delinquent debts contained within the database are or will be: 1) debts owed to the Federal Government, including the Executive, Legislative and Judicial branches; 2) past-due child support debts owed to the States or enforced by the States; and 3) other State debts at the discretion of the Secretary of the Treasury. The inclusion of past-due child support debts and other State debts are the subject of

Standards for Bringing Delinquent Federal Debts into the Treasury Offset Program

another standard operating procedure due to different requirements for these types of debts.

For purposes of this procedure, a creditor agency is any Federal agency which is owed delinquent debt as defined in the DCIA. It is not restricted to those agencies which extend credit, but also includes administrative debt.

A delinquent debt for administrative offset is a debt that is not being paid voluntarily by the debtor. Consequently, if the delinquent debtor is in a voluntary repayment plan acceptable to the creditor agency and is making the payments as required under the plan, the debt should not be referred for administrative offset.

Federal debts that have been certified to FMS, as described below, will be maintained in that database until removed. Federal payments disbursed by FMS and other disbursing officials will be matched against the database. The match will be made on two factors: 1) the taxpayer identifying number; and 2) the name of the debtor/payee.

When a match occurs between the records of delinquent debtors and payment records for Federal payees, FMS and other disbursing officials will divert all or part of the funds from the delinquent debtor/payee and transmit the offset amount to the appropriate creditor agency, less the administrative fee charged for processing the offset. If there are funds remaining after the offset, the remainder will be sent to the payee. The delinquent debt in the database is automatically reduced by the amount of the offset.

The administrative fees charged by FMS will be based on the costs of operating the TOP and may be added to the debt by the creditor agency so that the cost of the program is borne by the delinquent debtors, if permitted by creditor agency statute. There will be a per-offset fee charged only when an offset is taken. The fee will be

Standards for Bringing Delinquent Federal Debts into the Treasury Offset Program

adjusted annually based on operating costs and on the number of anticipated offsets.

Debt Submission

Creditor Agency Requirements Before Submission of Debts

1. Regulations. Creditor agencies must have regulations published which indicate that they may collect delinquent debts owed to them through administrative offset.
2. Taxpayer Identifying Numbers (TINs). TINs are required for all debts submitted to the TOP database. For individuals, the TIN is the Social Security Number; for businesses the TIN is the Employer Identifying Number.
3. Privacy Act Systems of Records Notice. Creditor agencies must have published a Privacy Act Systems of Records Notice which indicates that Social Security Numbers are collected for debt collection purposes and that delinquent debtor information may be disclosed to Treasury and other disbursing officials for administrative offset.
4. Due Process. The creditor agency must comply with all of the provisions of 31 U.S.C. § 3716 and 4 C.F.R. Part 102, as well as other statutes, regulations and policies applicable to collection by administrative offset by the creditor agency. Specifically, the creditor agency must have provided each delinquent debtor with the following:
 - a. written notification of the nature and the amount of the debt, the intention of the creditor agency to collect the debt through administrative offset, and an explanation of the rights of the debtor;

Standards for Bringing Delinquent Federal Debts into the Treasury Offset Program

- b. an opportunity to inspect and copy the records of the creditor agency with respect to the debt;
- c. an opportunity for review within the creditor agency of the determination of the creditor agency with respect to the debt; and
- d. an opportunity to enter into a written repayment agreement with the creditor agency.
- e. The creditor agency must also provide any other right or remedy required under its own specific statutes or regulations prior to collecting the debt through administrative offset.
- f. Delinquent debtors who contact FMS directly to contest the debt will be referred to the creditor agency who holds the debt. It is the responsibility of the creditor agency to respond promptly to debtors who are contesting the debt, making alternative (to offset) repayment offers, or submitting documentation about the debt.

Certification of Debts by Federal Creditor Agencies to TOP

Creditor agencies must certify to FMS that the information on delinquent debts they are submitting to TOP is accurate, the debts are legally enforceable, and the creditor agency has afforded the delinquent debtors all the due process rights required by law. The creditor agency remains responsible for processing any challenges to the accuracy and enforceability of the debt made by the debtor.

Standards for Bringing Delinquent Federal Debts into the Treasury Offset Program

1. Method of Certification.
 - a. The certification must be signed by the head of the creditor agency or by someone who has been delegated the authority from the head of the agency.
 - b. FMS hopes to have the TOP process completely electronic in the future. This will include the certification of new debts, as well as changes to the debts, after the initial submission from the creditor agency. Until the process is completely electronic, written certification remains necessary.
2. Initial Certification. When a creditor agency first submits its delinquent debts to TOP, it must formally certify that it has met all the requirements for participation. These requirements are contained in the prototype creditor agency certification letter which is attached to this document as Appendix A.
3. Addition of New Delinquent Debts to Database. As debts become 180 days delinquent, or earlier if the creditor agency so chooses, the creditor agency must submit them to FMS for inclusion in the TOP database. Each additional submission of new debts must be certified, as with the initial submission.
4. Annual Re-certification. After creditor agencies are participating in the TOP, FMS will provide a list of delinquent debts previously submitted by the creditor agency on an annual basis for agencies to scrutinize and re-certify as accurate and legally enforceable.
5. Certification of Additions and Deletions to Debts. Creditor agencies must submit adjustments to delinquent debts in the TOP database as they occur in order to maintain the

Standards for Bringing Delinquent Federal Debts into the Treasury Offset Program

accuracy of the debt in the database. Some, but not all, examples of adjustments are voluntary payments which decrease the debt, changes in the debt status due to bankruptcy, increase in the debt, decrease in the debt due to changes in the creditor agency's statutory requirements. These changes to the debts in the TOP database must also be certified by the creditor agency.

Interest and Penalties

If applicable, the creditor agency must comply with all of the provisions of 31 U.S.C. § 3717 and 4 C.F.R. Part 102, as well as other statutes, regulations and policies applicable to the creditor agency's assessment of interest, penalties and administrative costs. The creditor agency must provide a written notice to all debtors explaining the creditor agency's requirements concerning these charges prior to assessing them.

Maintenance of Delinquent Debt in TOP

Agencies' Role

1. Accuracy and Validity of Debts. Creditor agencies must maintain and update information on the delinquent debts in the TOP database to assure the following.
 - a. The debts are valid and legally enforceable in the amounts stated. The creditor agency will credit any collections, other than TOP offsets which are automatically deducted from the debt in the database by FMS, to the debt. The creditor agency update of debts in the database may be on a daily, weekly or monthly basis, depending on the volume of debts held by the creditor agencies.

Standards for Bringing Delinquent Federal Debts into the Treasury Offset Program

- b. The debts are not subject to any circumstances that legally preclude or bar collection, including collection by offset. The debts are delinquent and are not more than 10 years delinquent, except for those debts that may be legally offset if more than 10 years delinquent. There are no foreclosures pending with respect to any collateral securing a debt. The creditor agency's records do not show that any debtor owing a debt has filed for bankruptcy protection. Alternatively, the creditor agency can clearly establish that any automatic stay has been lifted or is no longer in effect.
2. Removal of Debts from Database. Creditor agencies must notify FMS at any time that a debt is no longer valid or legally enforceable and should be removed from the TOP. FMS will act promptly to remove the debt from the database and the TOP process.

FMS' Role

Invalidation of Debts in Database by FMS. On occasion and contrary to the guidance provided to the debtor, a delinquent debtor will submit substantive information directly to FMS instead of the creditor agency indicating that the debt is not accurate (e.g., it is paid in full) or not legally enforceable (e.g., bankruptcy is in process). In the interest of protecting the debtor from an erroneous offset, and only when supporting documentation is provided, FMS will invalidate the debt temporarily in the database, until the creditor agency confirms the information and advises FMS about the accuracy of the debt.

Standards for Bringing Delinquent Federal Debts into the Treasury Offset Program

Inquiries

Any inquiries may be made to:

Financial Management Service
Treasury Offset Program
Debt Management Services
Room 154 Liberty Center
401 14th St., SW
Washington, DC 20227
202-874-6660

APPENDIX A --

Creditor Agency Certification Letter

FROM: [CREDITOR AGENCY]

CERTIFICATION - TREASURY OFFSET PROGRAM (TOP)

With respect to [check one of the following]:

- ☐ Debts described in Batch #
- ☐ Debts described in Report #
- ☐ Annual Certification for debts referred to TOP prior to _____
- ☐ Debt # _____
- ☐ Other: _____

I certify the following:

1. Valid Debts. The debts are valid and legally enforceable in the amounts stated. The [Creditor Agency] will properly credit collections (other than TOP collections) to the delinquent debtors' accounts and notify FMS of any change in the amount of the debt.
2. No Bar to Collection By Offset. The debts are not subject to any circumstances that legally preclude or bar collection, including collection by offset. The debts are delinquent. No debt is more than 10 years delinquent, except for those debts that may be legally offset if more than 10 years delinquent. There are no foreclosures pending with respect to any collateral securing a debt. [Creditor Agency's] records do not show that any debtor owing a debt has filed for bankruptcy protection. Alternatively, [Creditor Agency] can clearly establish that any automatic stay has been lifted or is no longer in effect.
3. Due Process Compliance. [Creditor Agency] has complied with all of the provisions of 31 U.S.C. § 3716 and 4 C.F.R. Part 102, as well as other statutes, regulations and policies applicable to collection by administrative offset.

[Creditor Agency] has provided each debtor with:

- written notification of the nature and the amount of the debt, the intention of [Creditor Agency] to collect the debt through administrative offset, and an explanation of the rights of the debtor;

- an opportunity to inspect and copy the records of [Creditor Agency] with respect to the debt;
 - an opportunity for review within [Creditor Agency] of the determination of [Creditor Agency] with respect to the debt; and
 - an opportunity to enter into a written repayment agreement with [Creditor Agency].
4. Interest and Penalties. [Creditor Agency] has complied with all of the provisions of 31 U.S.C. § 3717 and 4 C.F.R. Part 102, as well as other statutes, regulations and policies applicable to [Creditor Agency's] assessment of interest, penalties and administrative costs. [Creditor Agency] has provided a written notice to all debtors explaining [Creditor Agency's] requirements concerning the charges.

CERTIFICATION: Pursuant to 31 U.S.C. § 3716 and 28 U.S.C. § 1746, I certify that the foregoing is true and correct. I certify that I have read and concurred with the Standard Operating Procedures entitled, "Delinquent Federal Debts into the Offset Program" attached to this certification. Finally, I certify that I have been delegated authority to execute this certification on behalf of the head of my agency.

Date

[Signature of Certifying Official]
Print Name: _____
Title: _____